overload of chloro atoms which, as discussed on page 7 of the present specification, might imbalance the nutritional value of a feed composition. As also discussed, the most suitable and efficient drying process involves applying a ring dryer.

Combining hydrolyzed wheat protein and maltodextrin, each having a certain degree of hydrolysis (DH for proteins and DE for maltodextrin), allows it to be combined with free amino acids in liquid form, and Applicants discovered a ring dryer is a most effective/efficient drying method for this combination of products.

It is not a matter of knowing that wheat gluten, maltodextrin, and free liquid amino acid might be – *arguendo* – available, or could be applied in a composition suitable for calf milk replacement. The statutory command reads "would have been" ***not*** "could have."

The combination of the features in the claims, such as, hydrolyzed wheat gluten, maltodextrin, and free liquid amino acid, shows Applicants' claimed inventive contribution to the art would have been non-obvious in view of the cited documents.

Applicants submit there is no *prima facie* case of obviousness, and it is courteously requested that he combination of WO '474, Orban, and Meheus et al. should be favorably reconsidered and withdrawn.

The Office Action mistakenly states that WO '474 discloses 1-20 parts and 8-20 parts of wheat gluten (claims 1 and 6), but the reference does not contain such a disclosure. While WO '474 discloses maltodextrin in an amount of 8-20 parts by weight, this is different from, and would not have led to, Applicants' requirement for 25-70 w/w% maltodextrin.

Mere paper overlap at DE=10 does not anticipate, nor would it have suggested, Applicants' claimed range. The Federal Circuit dismissed invalidity similar argumenst based on an alleged overlap in *Atofina v. Great Lakes*, 78 U.S.P.Q.2d 1417, 1424 (Fed. Cir. 2006):

> Further, we reject Great Lakes' argument that the district court's finding of anticipation was correct because JP 51-82206 discloses a preferred embodiment using a specific temperature range (a species) that anticipates the '514 patent's claim of a broader temperature range (a genus). JP 51-82206 discloses a preferred temperature range of 150 to 350 °C that slightly overlaps the temperature range claimed in the '514 patent. But that slightly overlapping range is not disclosed as such, *i.e.*, as a species of the claimed generic range of 330 to 450 °C. Moreover, the disclosure of a range of 150 to 350 °C does not constitute a specific disclosure of the endpoints of that range, i.e., 150 °C and 350 °C, as Great Lakes asserts. The disclosure is only that of a range, not a specific temperature in that range, and the disclosure of a range is no more a disclosure of the end points of the range than it is of each of the intermediate points. Thus, JP 51-82206 does not disclose a specific embodiment of the claimed temperature range.

Indeed, the cited WO '474 actually would not have led to the claimed range anyway. At page 4, lines 23 and 24, WO '474 discloses maltodextrins

having a DE of 10-35, but "preferably a maltodextrin having a DE between 12 and 20 is used." ***See also*** WO '474 at page 5, lines 9, 12, and 13. Thus, WO '474 provides explicit direction and incentive for a DE ***greater than*** 10.

Moreover, WO '474 and Orban are inconsistent. The former discloses protein contents of less than 20%, whereas the latter discloses protein contents greater than 20%.

The third primary reference, Meheus et al., does ***not*** appear to state the hydrolyzed protein ***mixture*** content is 18-22 wt%. Applicants respectfully submit the Office Action mistakenly characterizes the Meheus et al. reference at page 3, lines 3 and 4. Indeed, at column 4, lines 41-43, Meheus et al. discloses 2-30% of hydrolyzed protein mixture (sugar mixed with cereal protein). Applicants' claim 1 requires 3—70 w/w% cereal proteins, which is not described in Meheus et al., nor would it have been suggested. *Atofina v. Great Lakes, supra.*

The three primary references are inconsistent with one another and, in any event, would not have so led a person of ordinary skill in the art to the presently claimed invention. Combining WO '474, Orban, and Meheus et al. with Armbruster et al. (U.S. 3,849,194) and the Branen et al. article does not lead to the present invention.

The Armbruster patent simply makes low DE starches more ***before*** WO '474, Orban, and Meheus et al. However, none of WO '474, Orban, or Meheus

et al. involves low DE starches, e.g., maltodextrins with a DE of no more than 10, or maltodextrins with a DE of 5.

Armbruster lists a number of theoretical uses (column 7, lines 50-64), but nowhere mentions the calf milk replacement of the primary references.

The Office Action, therefore, seems to mistakenly cite column 1, lines 20-26, of Armbruster. Indeed, at column 1, lines 26-34, Armbruster discloses what they meant by "food items," and ***none*** is related to the calf milk replacement of WO '474 or the composition of Orban or Meheus et al.

Ernster apparently has primary reference from its mention of a ring dryer. The reference otherwise relates to a hydrolyzed proteinaceous with solid." At column 2, lines 10-13, Ernster refers to a hydrolyzed proteinaceous solid derived from milk which is **low** in fat content. That is the antithesis of WO '474, Orban, and Meheus et al.

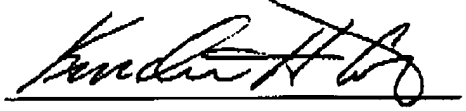
In view of the foregoing remarks, it is respectfully submitted that all pending claims are allowable over the cited combination of WO '474 taken with Orban and Meheus et al. (U.S. 6,096,353) in view of Ernster, Armbruster et al., and the Branen et al. article. Applicants, therefore, courteously solicit favorable reconsideration and allowance.

Applicants hereby request a one-moth extension of time in which to file this response, and the Commissioner is hereby authorized to charge the one-month extension fee to Deposit Account No 06-1135. The Commissioner is

further authorized to charge any omitted fee required to effect entry of this response, including application processing, extension, and extra claims fees, to said deposit account.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

BY: 

Kendrew H. Colton, #30,368

Customer No. 42798
One Lafayette Centre
1120 - 20th Street, NW, Suite 750 South
Washington, DC 20036
(202) 419-7000 (telephone)
(202) 419-7007 (telecopier)